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## Costs Decision

Site visit made on 5 June 2024

**by J Evans BA(Hons) AssocRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 June 2024**

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### **Costs application in relation to Appeal Ref: APP/Q1153/W/23/3332182 Willowdene, Bratton Clovelly, Okehampton EX20 4LB**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr and Mrs Braidwood for a full award of costs against West Devon Borough Council.
  - The application Ref: 2590/23/FUL, dated 27 July 2023, was refused by notice dated 9 October 2023.
  - The appeal was against the refusal of planning permission for an ancillary domestic timber studio building.
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### **Decision**

1. The application for a full award of costs is refused.

### **Preliminary Matters**

2. The costs application submitted by the applicants does not expressly state whether a full or partial award of costs is sought. However, by reason of the information contained within the costs application, I have interpreted the application as being as an application for a full award of costs, and I have considered the costs application on that basis.

### **Reasons**

3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The general principle embodied within the PPG is that the parties involved should normally meet their own expenses.
4. The applicants are seeking a full award of costs against the Council. The applicants consider that the Council have behaved unreasonably on substantive reasons, on the basis that the application was refused by the Council on an incorrect conclusion that the development applied for proposed a self-contained ancillary use and was thus assessed against housing policies in the development plan. The applicants consider that the Council have applied non relevant development plan policies in their assessment of the proposals as a result, and thereby in pursuing the appeal, this has caused them additional expense.
5. The PPG gives examples of substantive reasons for an award of costs, which includes making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.

6. As I have set out in my appeal decision, the description of the development on the application form refers to an *'ancillary domestic timber studio building'*. Under the section of the application form which states, *'Does your proposal include the gain, loss or change of use of residential units?'*, the applicants answered 'No'. In the subsequent section, in response to the question *'Does your proposal involve the loss, gain or change of use of non-residential floorspace? Note that 'non-residential' in this context covers all uses except Use Class C3 Dwellinghouses'*, the applicants replied 'Yes', stating that the use related to an *'Ancillary studio to dwelling.'*
7. The Council in their Costs Reply suggest that an ancillary building is not materially different to living accommodation ancillary to the host dwelling.
8. From my review of all of the information presented, such as what is set out on the application form, the proposed plans and what I observed during my site, I concluded that the intended use of the application building is to provide for an ancillary building consisting of a studio and store, rather than a self-contained ancillary use. In reaching this view, I noted that the building applied for is of a restrictive size, without the typical facilities for day-to-day occupation, such as a bathroom, kitchen, or similar.
9. For the listed housing policies raised in the decision notice to be relevant to the decision it would be necessary for the application building to be providing for self-contained accommodation. It is not, and this is not what has been applied for. If the building was to provide for self-contained accommodation, it would require a separate grant of planning permission, or the use would be at risk of enforcement action if such permission is not granted. In this regard, I find that a number of the policies listed on the decision notice are not relevant to the impact of the proposal.
10. With all of that said, I do acknowledge that the reason for refusal does not expressly state that the Council's area of concern is specific to the use only of the application building. It refers to the siting, location and physical relationship of the application building being the area of concern, and I do accept that some of the Policies listed on the decision notice are not exclusively relevant to housing developments only and are also relevant to assessing the impact of an ancillary building.
11. To conclude, whilst I am not entirely convinced that the Council have adequately substantiated their position, and I find a number of the Policies listed in the decision notice are not relevant to the application submitted, as I have set out in my accompanying appeal decision, the siting, location and physical relationship of the application building to the host dwelling requires a degree of planning judgement. Therefore, I do not consider that in reaching their decision, the Council have delayed development which should have clearly been permitted.
12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

*J Evans*

INSPECTOR